

Departmental Disclosure Statement

Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 May 2019.

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Part One: General Policy Statement

The Immigration (International Visitor Conservation and Tourism Levy) Amendment Bill amends the Immigration Act 2009 (**the principal Act**) to provide for the collection of an international visitor conservation and tourism levy (**the IVL**).

The recent growth in visitors has put pressure on visitor infrastructure (including on facilities and public conservation lands and waters managed by the Department of Conservation). This visitor infrastructure is necessary to support tourism in New Zealand. In some instances, the organisations providing the infrastructure and/or managing public lands and waters have limited mechanisms to directly charge visitors for the use of these assets, resulting in under-investment or cross-subsidy from other groups. A suite of funding mechanisms is required to support investment and maintenance of the infrastructure visitors use and the natural environment they enjoy. The Bill provides for one mechanism – a revenue stream generated directly from international visitors that can be used to contribute to the funding of conservation, infrastructure used for tourism, and other initiatives relating to tourism.

The IVL will be collected by Immigration New Zealand through the immigration system. The Bill allows for regulations to be made to require visitors to pay the IVL alongside fees for temporary entry class visa applications and electronic travel authority (**ETA**) requests. The Bill also allows for the regulations to determine who is required to pay, the amount they are required to pay and any exemptions from the requirement to pay. The Bill also expands the section of the principal Act that allows for automated decision making to include automated decision making for the ETA, which is one mechanism by which the IVL is collected.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
In preparing policy advice MBIE took into account New Zealand's international interests and obligations on advice from the Ministry of Foreign Affairs and Trade.	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry for Business, Innovation and Employment completed a regulatory impact analysis for the International Visitor Conservation and Tourism Levy (IVL). It is available here: https://www.mbie.govt.nz/immigration-and-tourism/tourism/tourism-funding/international-visitor-conservation-and-tourism-levy/</p> <p>And here: https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-international-visitor-conservation-and-tourism-levy</p> <p>The Ministry also completed a regulatory impact analysis and a cost recovery impact statement for the electronic travel authority (ETA). The documents are available here: https://www.mbie.govt.nz/assets/6050f1c58d/eta-regulatory-impact-summary.pdf and https://www.mbie.govt.nz/assets/c2a21fef19/cabinet-paper-electronic-travel-authority-further-policy-decisions-1-v2.pdf</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
A joint quality assurance team from The Treasury and the Ministry of Business, Innovation and Employment has reviewed the IVL Regulatory Impact Statement and considers that it meets the quality assurance criteria, enabling for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
<p>The policy development for the IVL was done concurrently with the policy development for the Electronic Travel Authority (ETA). The context of the IVL is considered in the regulatory impact statement for the ETA, and vice versa.</p> <p>Immigration New Zealand, a business unit of the Ministry of Business, Innovation and Employment commissioned an <i>Economic Impact Analysis: The impact of the proposed International Visitor Levy and Electronic Travel Authority fee on inbound tourism</i> to inform the business case for the ETA.</p> <p>Both are available at https://www.mbie.govt.nz/immigration-and-tourism/immigration/proactive-release-of-immigration-information/</p>	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>This information is available in the regulatory impact analysis for the International Visitor Conservation and Tourism Levy, particularly section B, and sections 5.2 and 5.3. It is available here: https://www.mbie.govt.nz/immigration-and-tourism/tourism/tourism-funding/international-visitor-conservation-and-tourism-levy/</p> <p>This information is available in the regulatory impact analysis for the electronic travel authority, particularly section 4. Available here: https://www.mbie.govt.nz/assets/6050f1c58d/eta-regulatory-impact-summary.pdf</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>The analysis of the costs and benefits of the electronic travel authority (ETA) took into account the cost of the IT build and communication and engagement costs. Ongoing operational costs will be met on a cost-recovery basis.</p> <p>For the IVL the additional compliance cost to Immigration New Zealand is minor, as payment is simply part of the application or request process.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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MBIE consulted with relevant agencies including Inland Revenue, the Ministry of Foreign Affairs and Trade (MFAT), and the Ministry of Transport in the development of the policy proposals to ensure the IVL and ETA were consistent with New Zealand's international obligations.

MFAT proactively engaged with a number of foreign governments about the IVL and ETA. While queries were raised, MFAT was able to satisfy foreign governments on most points.

Cabinet considered the context of New Zealand's international obligations when considering the IVL. The Cabinet paper is available at page 56 here: <https://www.mbie.govt.nz/assets/7f2caa2ee2/options-for-implementing-an-international-visitor-levy.pdf> - note that parts of this paper have been withheld under the Official Information Act 1982, specifically section 6(a).

All relevant agencies, including MFAT, Inland Revenue, and the New Zealand Defence Force were consulted on the draft Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Business, Innovation and Employment has not identified any implications for the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

We expect the advice to be published on the Ministry of Justice website here: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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The Immigration and Protection Tribunal is not impacted by the proposals in this Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
<p>A privacy impact analysis was completed for the electronic travel authority. Implementation of the Bill will use existing systems and processes by Immigration New Zealand for managing personal information. The Privacy Commissioner was consulted during the development of the privacy impact analysis for the electronic travel authority.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><i>International Visitor Conservation and Tourism Levy</i></p> <p>Initial policy development was informed by consultation with ten government departments and two Crown entities (Tourism New Zealand and the New Zealand Transport Agency). Early engagement with the tourism sector also informed the proposal to collect the levy via immigration systems (an additional charge on visa applications and ETA requests).</p> <p>Public consultation on the proposal to introduce the international visitor levy happened in June and July 2018. MBIE received 107 submissions, including 37 from the tourism industry, 25 from local government and 45 from private individuals. Over 90 submitters supported the IVL, though some only if certain conditions were met. These conditions include that the government ring-fence / hypothecate the IVL revenue, sector representatives have a voice in decision-making, and the IVL is managed transparently.</p> <p>In addition to public consultation, the Ministry met with several stakeholders from the tourism industry on request to discuss the proposals.</p> <p>Feedback was used to inform the paper used by Cabinet to make final decisions, available here: https://www.mbie.govt.nz/immigration-and-tourism/tourism/tourism-funding/international-visitor-conservation-and-tourism-levy/. The Bill sets out that revenue will be spent on conservation and tourism, the other points raised will be given effect to through policy settings.</p> <p><i>Electronic travel authority</i></p> <p>In June and July 2018, in conjunction with the consultation on the IVL, MBIE also consulted on the introduction of the ETA as a measure to enhance New Zealand's border security. 19 external submissions were received, a majority of which were from industry stakeholders. The Ministry also met with several stakeholders to discuss issues raised. 14 of the 19 submissions supported the ETA proposal, and concerns raised have been taken into account in the process, system and implementation design.</p> <p>No external parties were consulted on a draft of the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Policy development and the drafting of the Bill (and associated Regulations) has been informed by Immigration New Zealand's existing processes for visa applications, and the development of policy and the IT build for the electronic travel authority (ETA).	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>This Bill will amend the Immigration Act 2009 to provide for the collection of a levy from international visitors to New Zealand, to fund conservation and tourism.</p> <p>The Bill specifies that regulations may be made to levy applicants for a temporary entry class visa, and people seeking to rely on a waiver under section 69 of the Act to hold a temporary entry class visa to travel to New Zealand (ie those who will have to hold an electronic travel authority to travel visa-waiver to New Zealand, subject to the necessary regulation changes being agreed by Cabinet).</p> <p>The Bill will also provide for the regulations setting the amount of the levy and any exemptions from the levy. Regulations will be reviewed at intervals of no more than 5 years. Cabinet has agreed to the initial exemptions, and all future exemptions will be set by the Minister after consultation with appropriate persons and organisations. Cabinet has agreed to a fee of \$35. Future fees will be set by the Minister after consultation with appropriate persons and organisations.</p> <p>The Bill specifies that the purpose of the levy will be to fund or contribute to the funding of conservation (as defined in the Conservation Act 1987), and infrastructure used for tourism and other initiatives related to tourism.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
Section 28 of the Immigration Act provides for automated decision making for a range of immigration matters but the scope does not extend to automated decisions on conditions of visa waivers, meaning that technically ETA decisions cannot be made by an automated system. Therefore this Bill also amends the Act to allow for automated decision making on the ETA.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Section 399A(1) enables the creation of regulations to collect the levy from applicants for temporary entry class visas and from people to whom requirement to hold a visa has been waived under section 69 of the Immigration Act (i.e. visa-waiver travellers).</p> <p>Section 399A(2) provides that the regulations made for the purpose of the levy can: prescribe the amount or method of calculation of the levy; provide for exemptions from payment of the levy; and provide for the collection of the levy.</p> <p>This is consistent with the level of detail existing in the Immigration Act 2009 regarding the Immigration Levy, and allows for changes to how the levy is applied in future that will be of too detailed nature to justify the use of parliamentary time.</p> <p>Procedural safeguards in place will be Cabinet scrutiny of any proposed changes to regulations (as regulations made under the Immigration Act are done by Order In Council), and the requirement for the Minister to consult persons or organisations the Minister considers appropriate.</p> <p>Section 399A(4) will enable the Minister to exempt, by special direction, an individual from paying the levy. In practice we expect this will be delegated to MBIE (Immigration Officers designated under section 388 of the Immigration Act), as is the practice for the immigration levy.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO